## REMARKS

This responds to the Final Office Action dated January 13, 2009.

Claims 1, 2, 12, 15, 18 and 28 are amended, claims 4, 5, 13, 17, 20 and 29 are canceled, and no claims are added. Thus, claims 1, 2, 6, 7, 9-12, 14-16, 18, 21-28 and 30 are now pending in this application.

*§ 101 Rejection of the Claims*

Claims 1, 2, 4-7, 9-18 and 20-30 were rejected under 35 U.S.C. § 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility. Applicant respectfully traverses the rejection for at least the following reasons.

The Office Action states, at page 2, second paragraph, "(t)he specification states switches...are controlled by their respective controllers...; however the specification lacks specific circuitry elements to enable one of ordinary skill in the art to construct the controllers to enable the function of controlling." Applicant respectfully traverses. One of skill in the art will understand that a controller is known for use in telemetry communication. A controller is programmable to enable the function of controlling. No additional "specific circuitry elements" are needed for a controller to perform a variety of functions, including changing a switch from a first position to a second position. For example, a controller connected to a switch via a wire (as shown in the FIGS.) can provide current over the wire to a terminal of a transistor (one example of a switch) to bias the transistor to allow current to flow (opening the switch), and the controller can stop providing current over the wire to close the switch. In addition, known controllers know when to transmit and can flip a switch to provide power for transmission. The provided examples are for illustration purposes, and are not meant to be limiting. An individual with skill in the art would be able to program a controller to open or close a switch.

In addition, Applicant incorporates by reference the previous arguments traversing this rejection from the Applicant's previous responses. Applicant respectfully requests reconsideration of this rejection in view of the amended claims.

Applicant respectfully requests withdrawal of the §101 rejection of the claims.

*§ 112 Rejection of the Claims*

Claims 1, 2, 4-7, 9-18 and 20-30 were rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate description or enablement. Applicant respectfully traverses. With respect to this rejection, the Applicant refers to the discussion above with respect to the §101 rejection of the claims. Based at least on that discussion, Applicant respectfully asserts that one of skill in the art would know how to use the claimed invention. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of the claims.

*Claim Amendments*

Independent claims 1, 12, 15, 18 and 28 have been amended to further clarify the recited subject matter. Claim 1 has been amended to include subject matter of claim 5, claim 12 has been amended to include subject matter of claim 13, claim 15 has been amended to include subject matter of claim 17, claim 18 has been amended to include subject matter of claim 20, and claim 28 has been amended to include subject matter of claim 29. Claims 5, 13, 17, 20 and 29 were only rejected for lack of utility and enablement (traversed above), not over prior art.

*§ 102 Rejection of the Claims*

*Claims 1, 2 and 18*

Claims 1, 2 and 18 were rejected under 35 U.S.C. § 102(e) for anticipation by Von Arx et al. (U.S. Patent No. 6,993,393, "Von Arx").

Applicant maintains its right to swear behind the Von Arx reference, which is cited in a rejection under 35 U.S.C. §§ 102(e). Statements distinguishing the claimed subject matter over the Von Arx reference are not to be interpreted as admissions that the reference is prior art.

Applicant is unable to find, among other things in the cited portion of Von Arx, a handheld device configured to communicate data with an implanted device using inductive telemetry, a first battery voltage source, a second battery voltage source, a battery powered telemetry coil electrically connected in series with the second battery voltage source, a battery powered controller electrically connected to the first battery voltage source to be powered by the first battery voltage source, a switch configured to, in response to a control signal, selectively

connect the first battery voltage source in series with the second battery voltage source to power the battery powered telemetry coil, where the controller is configured to provide the control signal to drive the telemetry coil for telemetry communication, and where the controller is configured to transmit and receive data to and from a telemetry coil of the implanted device using inductive telemetry, as recited in claim 1. Claim 2 depends directly on claim 1, and is believed to be allowable for the reasons provided with respect to claim 1.

With respect to independent claim 18, Applicant is unable to find, among other things in the cited portion of Von Arx, a method of powering a handheld device having a controller, a telemetry coil, and at least one battery providing a battery voltage, the method including transmitting and receiving data to and from an implanted device using inductive telemetry, where the handheld device includes a first battery providing a first battery voltage, and a second battery providing a second battery voltage, the controller being powered by the first battery voltage and the telemetry coil being driven by the second battery voltage and where the telemetry coil is driven by a series combination of the first and second battery voltages, as recited in claim 18.

Reconsideration and allowance of claims 1 and 18 are respectfully requested.

*Claims 12 and 15*

Claims 12 and 15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Itoga et al. (U.S. Patent No. 5,122,729, "Itoga"). Applicant respectfully traverses the rejection for at least the following reasons.

Applicant respectfully submits that "sensing" or "detecting" a distance between (or relative placement of) coils using an analog feedback loop is not "transmitting data." In addition, the cited reference does not show a controller programmed to control a coil to transmit data. Thus, Applicant respectfully submits that Itoga does not teach a "telemetry coil" as claimed in the present application. Applicant has amended the independent claims to further clarify the recited subject matter.

With respect to independent claim 12, Applicant is unable to find among other things in the cited portion of Itoga, a circuit for a wireless handheld device configured for communicating data with inductive telemetry, including a telemetry coil driven by the first battery voltage source and controllable by the controller to transmit and receive data to and from a second device using

inductive telemetry and a second battery voltage source connected in series with the first voltage source, wherein the first battery voltage source powers the controller and the second voltage battery source drives the telemetry coil, as recited in claim 12.

With respect to independent claim 15, Applicant is unable to find among other things in the cited portion of Itoga, a method of powering a handheld device configured for communicating data with a second device using inductive telemetry, including activating the telemetry coil in the handheld device to facilitate inductive telemetry for transmitting and receiving data to and from the second device, where the handheld device further includes a second battery voltage source connected in series with the first battery voltage source, where the telemetry coil is activated using increased voltage provided by the first and second battery voltage sources in series, as recited in claim 15.

Reconsideration and allowance of claims 12 and 15 are respectfully requested.

## § *103 Rejection of the Claims*

*Claims 1, 2 and 18*

Claims 1, 2, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Von Arx in view of Nelms (U.S. Patent No. 4,323,074). Applicant respectfully traverses the rejection for at least the following reasons.

As stated above with respect to independent claims 1 and 18, Applicant respectfully asserts that Von Arx does not anticipate the subject matter recited in claims 1 and 18 as recited. Applicant respectfully submits that the deficiencies in the rejection with respect to Von Arx discussed above are not overcome by combination with the cited portions of Nelms. Claim 2 depends directly on claim 1, and is believed to be allowable for the reasons provided with respect to claim 1.

Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 1, 2, and 18.

*Claims 1, 2, 4, 11, 16, 18, 22-28 and 30*

Claims 1, 2, 4, 11, 16, 18, 22-28 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Itoga in view of Nelms. Applicant respectfully traverses the rejection for at least the following reasons.

Applicant is unable to find, among other things in the cited portion of the cited references, a handheld device configured to communicate data with an implanted device using inductive telemetry, including a battery powered controller and a battery powered telemetry coil controlled by the controller and configured to transmit and receive data to and from a telemetry coil of the implanted device using inductive telemetry and a switch having open and closed positions, wherein when the switch is in the open position only the second battery voltage source drives the telemetry coil, and when the switch is in the closed position the first and second voltage battery sources drive the telemetry coil, as recited in claim 1. Claims 2 and 11 depend, either directly or indirectly, on independent claim 1, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 1.

Claims 22 and 23 depend on independent claim 12, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 12 above. Claims 16 and 24-26 depend, either directly or indirectly, on independent claim 15, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 15 above.

With respect to independent claim 18, Applicant is unable to find, among other things in the cited portion of Itoga, a method of powering a handheld device having a controller, a telemetry coil, and at least one battery providing a battery voltage, the method including transmitting and receiving data to and from an implanted device using inductive telemetry, where the handheld device includes a first battery providing a first battery voltage, and a second battery providing a second battery voltage, the controller being powered by the first battery voltage and the telemetry coil being driven by the second battery voltage, where the telemetry coil is driven by a series combination of the first and second battery voltages, as recited in claim 18. Claim 27 depends on independent claim 18, and is believed to be in condition for allowance at least for the reasons provided with respect to claim 18.

Applicant is unable to find, among other things in the cited portion of Itoga, a handheld device configured to communicate data with an implanted device using inductive telemetry, including a battery powered controller and a battery powered telemetry coil controlled by the controller and configured to transmit and receive data to and from a telemetry coil of the implanted device using inductive telemetry, where the means for adapting the first potential includes a voltage amplifying device adapted to amplify the first potential to provide the second potential to power the telemetry coil, as recited in claim 28. Claim 30 depends on independent claim 28, and is believed to be in condition for allowance at least for the reasons provided with respect to claim 28.

Applicant respectfully traverses the assertion that one of skill in the art would have found it obvious to use the teaching of Itoga with an implanted device. Itoga does not provide any suggestion that its power supply device with voltage sensing would function with a device implanted within human tissue. In addition, Applicant respectfully traverses the assertion that one of skill in the art would have found it obvious to provide a switch to control current in Itoga. Further, the switch disclosed in the present subject matter is used to connect a power source to a telemetry coil, and applicant cannot find a telemetry coil in Itoga.

Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 1, 2, 4, 11, 16, 18, 22-28 and 30.

## CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (715) 824-5144 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date April 9, 2009

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 9, 2009.

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